IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STATE FARM MUTUAL AUTO INS. CO.		
		CIVIL ACTION
v.		**No. 99-485**
ROBERT FILIPE, executor of the estate of VINCENZINA FILIPE, deceased		

MEMORANDUM

Broderick, S.J. **March 29, 2000**

This is a declaratory judgment action brought by Plaintiff to determine whether Defendant is precluded from recovering underinsured motorist (UIM) benefits pursuant to a "family exclusion clause" in policies of motor vehicle insurance issued by Plaintiff. Plaintiff has moved for summary judgment, and Defendant has opposed. For the reasons which follow, the Court will grant Plaintiff's motion for summary judgment.

Background

The parties have stipulated to the following facts. On October 6, 1989, the decedent Vincenzina Filipe was killed when the 1987 Subaru Station Wagon ("Subaru") being driven by her husband, Jose Filipe, was involved in an accident with another car driven by Mr. Yim Chin. Vincenzina Filipe was a front seat passenger in the Subaru. At the time of the accident, Vincenzina Filipe and her husband Jose Filipe lived together in the same household. The Subaru was insured under a policy issued by Plaintiff State Farm Mutual Automobile Insurance Company ("State

Farm") No. 3571696-C26-38A and carried a liability limit of $100,000.

At the time of the accident, the Filipe's also owned a 1978 Mercedes which was not involved in the accident. The 1978 Mercedes was insured under a separate insurance policy issued by State Farm, No. 295-7704-A03-38E. The liability limit under this policy is also $100,000. Jose Filipe is the named insured under both policies.

On September 10, 1991, the Executor of Vincenzina Filipe's Estate filed a lawsuit against Jose Filipe as well as against Yim Chin, the owner and operator of the other vehicle involved in the accident. State Farm settled with the Estate for the full policy limit of $100,000 pursuant to the liability provisions of the policy covering the Subaru.

Discovery in the state law action of Filipe v. Yim Chin et al, "indicated that the accident was caused by the negligence of Jose Filipe." Having collected the liability limit under the Subaru policy, Vincenzina Filipe's Estate intended to pursue the $100,000 underinsured motorist limit from the Mercedes policy.

On October 6, 1993, Vincenzina Filipe's Estate brought a state court action against State Farm to recover UIM benefits from the second policy covering the Mercedes, which had not been involved in the accident. The Petition was dismissed without prejudice and reopened on April 22, 1998.

Each of the two policies contains a "Family Exclusion Clause" which states:

> **Underinsured Motor Vehicle** - means a land motor vehicle:
> 1. the ownership, maintenance or use of which is insured or bonded for bodily injury liability at the time of the accident; and
> 2. whose limits of liability for bodily injury liability;
>
> a. Are less than the amount of the **insured's** damages; or
>
> b. Have been reduced by payment to **persons** other than the **insured** to less than the amount of the **insured's** damages.
>
> An **underinsured motor vehicle** does not include a land motor vehicle:
> 1. insured under the liability coverage of this policy;
> 2. furnished for the regular use of **you**, **your spouse**, or any **relative** . . .

See Complaint, Ex A. p.16 (Emphasis in original)

Plaintiff State Farm filed this declaratory judgment action seeking judgment that Defendant is not entitled to UIM benefits.

Because a federal court retains discretion to entertain a declaratory judgement action resolving issues governed exclusively by state law action when a state court proceeding is pending, this Court ordered the parties to address the factors discussed by the United States Supreme Court in Wilton v. Seven Falls, Co., 515 U.S. 277, 282 (1995) and Brillhart v. Excess Ins. Co., 316 U.S. 491 (1942).

Defendant Filipe has not filed a response to the Court's order. Plaintiff State Farm's submission of the state court docket reveals that while a Summons was filed and served on State

Farm, a Complaint was never filed in the underlying state court action.

Because a Complaint was never filed in the state court action, this Court cannot determine whether the pending state court action presents the same issues and seeks the same relief. Thus, although a state court action is "pending", it has spent considerable time on deferred status and it appears that no action involving the merits has proceeded. Therefore, this Court finds it is in the interests of justice to proceed with the resolution of the federal declaratory judgment action.

Legal Standard

A court may grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). In response to a motion for summary judgment, the non-moving party must "set forth specific facts showing that there is a genuine issue for trial." Fed.R.Civ.P. 56(e); see Celotex v. Catrett, 477 U.S. 317, 322-24 (1986). In doing so, the non-moving party must "do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986).

When deciding a motion for summary judgment, a court must

draw all justifiable inferences in favor of the non-moving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). A genuine issue of material fact exists only when "the evidence is such that a reasonable jury could return a verdict for the non-moving party." Id. at 248. If the evidence of the non-moving party is "merely colorable," or is "not significantly probative," and the moving party is entitled to judgment as a matter of law, summary judgment may be granted. Id. at 249-50.

Analysis

This Court has diversity jurisdiction in this declaratory judgment action and will apply Pennsylvania law. See 28 U.S.C. 1332; 2-J Corp. v. Tice, 126 F.3d 539, 541 (3d Cir. 1997). This case turns on the applicability of the "family exclusion clause" in the policy covering the 1978 Mercedes. Plaintiff contends that Defendant is precluded from recovering UIM benefits pursuant to the family exclusion clause.

Defendant does not argue that the family exclusion language in the insurance policies issued by Plaintiff is unclear or ambiguous. Nor does Defendant contest that the language in the family car exclusion in the Mercedes policy cited above clearly and unambiguously bars his recovery of UIM benefits since Vincenzina Filipe was the spouse of the named insured and resided with him at the time of the accident. Defendant contends that the family exclusion clause, as applied in this case, violates

public policy.

The Pennsylvania Supreme Court has cautioned that "public policy is more than a vague goal which may be used to circumvent the plain meaning of a contract." Eichelman v. Nationwide Ins. Co., 551 Pa. 558, 563 (1998). When examining the validity of family car exclusions the court must consider the legislative intent behind the Motor Vehicle Financial Responsibility Law ("MVFRL") and its UIM provisions. Id. at 564. "The purpose behind underinsured motorist coverage is to protect the insured from the risk that a negligent driver of another vehicle will cause injury to the insured and will have inadequate insurance coverage to compensate the insured for his injuries." Paylor v. Hartford Ins. Co., 536 Pa. 583, 564 (1994).

The Supreme Court of Pennsylvania has upheld the validity of family exclusion clauses in four cases. See Eichelman v. Nationwide Ins. Co., 551 Pa. 558 (1998); Hart v. Nationwide Ins. Co., 541 Pa. 419 (1995)(per curium); Windrim v. Nationwide Ins. Co., 537 Pa. 129 (1994); Paylor v. Hartford Ins. Co., 536 Pa. 583 (1994). The Pennsylvania Supreme Court has stated that "the enforceability of the exclusion is dependant upon the factual circumstances presented in each case." Paylor, 536 Pa. at 595.

In Paylor, a wife was a passenger in a motor home that was being driven by her husband. Id. at 585. The motor home was involved in a single vehicle accident and both husband and wife

were killed. Id. Their daughter, Janet Paylor, was appointed as administratrix of the wife's estate. Id.

At the time of the accident, the motor home was insured under a policy which named both husband and wife as named insureds ("the motor home policy"). Id. at 586. In addition, the husband and wife were named insureds on a separate policy which covered their three automobiles ("the automobile policy"). Id. After Paylor recovered the limits of the liability coverage on the motor home policy, she sought UIM benefits under the automobile policy. Id. Paylor was denied UIM benefits pursuant to a family exclusion clause. Id.

The Pennsylvania Supreme Court upheld the validity of the family exclusion clause. The Paylor court stated that "[t]he litany of cases demonstrates that the 'family car exclusion' is not necessarily violative of public policy or the legislative intent underlying the MVFRL." Id. at 595. The Paylor court stated that the family car exclusion is enforceable when a plaintiff is attempting to convert underinsured coverage into liability coverage.

The facts in Paylor are strikingly similar to the present case in that estate of a passenger/wife is seeking to collect UIM benefits from a negligent driver/husband pursuant to a separate insurance policy on an additional family car. Thus, the Paylor court's reasoning is applicable, and the family car exclusion is

valid. Defendant attempts to distinguish Paylor by arguing that Vincenzina Filipe was not the named insured on her husband's insurance policies. However, there is no question that she was married to Jose Filipe, lived in the same household, and was a "covered person" under the policy. The Pennsylvania case law upholding the validity of "family exclusions" in automobile insurance policies makes no distinction between named insureds and covered persons. See Ridley v. State Farm Mut. Auto. Ins. Co., 1999 WL 1206650 at *6 (Pa.Super).

Defendant relies on the case of Marroquin v. Mutual Benefit Ins. Co., 404 Pa.Super. 444 (1991) where the Pennsylvania Superior Court determined that a family exclusion provision was void as against public policy. In Marroquin, a man negligently hit his brother with his car. Both driver and victim lived with their parents at the time of the accident. After the victim/ brother recovered the maximum from the driver/brother's policy, the victim/brother sought UIM benefits from the parents' insurance policy. Under the facts of that case, the Superior Court held that the family exclusion contained in the parents' insurance policy was invalid and did not apply.

Of course, the Pennsylvania Supreme Court distinguished Marroquin when it decided Paylor. Likewise, the facts of this case are distinguishable from Marroquin. The policy covering underinsurance in Marroquin was owned by the claimant's parents

who were not involved in any way with the underlying accident. In the present case, a wife is seeking coverage under a policy of insurance owned by the negligent husband/driver. As Pennsylvania Supreme Court has approvingly quoted:

> If [the claimant] wishes greater protection while riding as a passenger in her own car, she should increase her liability insurance. Underinsured motorist insurance is purchased to protect oneself from other drivers whose liability insurance purchasing decisions are beyond one's control. Underinsured motorist coverage is not meant as insurance in case a person underinsures his own vehicle.

Paylor, 536 Pa. 591 (quoting Holz v. North Pacific Ins. Co., 765 P.2d 1306, 1309-10 (Wash.App. 1998)).

Defendant nevertheless attempts to distinguish Paylor by noting that, in Paylor, the husband and wife had insured the motor home with substantially less coverage than they insured the automobiles, which would allow them to convert inexpensively purchased UIM benefits for the family cars into liability coverage for the motor home. In the instant case, Defendant notes that both the Subaru policy and the Mercedes policy contain an identical liability limit of $100,000.

Such an argument, however, ignores the Paylor court's rationale that UIM insurance is purchased to protect oneself from other drivers whose liability purchasing decision are beyond one's control. If Vincenzina Filipe wanted greater protection while riding as a passenger in a family car, she should have

increased the liability insurance. See Paylor at 591.

As the Pennsylvania Supreme Court has cautioned, "it is only in the clearest of cases that a court may make an alleged public policy the basis of judicial decision." Eichelman, 551 Pa. at 567. This Court will not invalidate a clear and unambiguous contract term on the basis of Defendant's vague "public policy" grounds. In fact, strong public policy considerations favor enforcement of the family car exclusion. See id.

Conclusion

For the reasons stated above, the Court will grant Plaintiff's motion for summary judgment and enter declaratory judgment in favor of Plaintiff and against Defendant.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
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STATE FARM MUTUAL AUTO INS. CO.		
v.		**CIVIL ACTION No. 99-485**
ROBERT FILIPE, executor of the estate of VINCENZINA FILIPE, deceased		

ORDER

AND NOW, this 29th day of March, 2000; Plaintiff State Farm Mutual Auto Insurance Company having filed a motion for summary judgment; Defendant Filipe having opposed; for the reasons set forth in this Court's Memorandum filed on this date;

IT IS ORDERED: Plaintiff's motion for summary judgment is **GRANTED**;

IT IS FURTHER ORDERED: Declaratory Judgment is hereby entered in favor of Plaintiff State Farm Mutual Auto Insurance Company and against Defendant Robert Filipe, declaring that Robert Filipe, as executor of the estate of Vincenzina Filipe, is not entitled to underinsured motorist benefits under the insurance policy No. 295-7704-A03-38E issued by State Farm to Robert Filipe covering the 1978 Mercedes which clearly states: "An underinsured motor vehicle does not include a land motor vehicle . . . furnished for the regular use of you, your spouse, or any relative . . . ."

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RAYMOND J. BRODERICK, S.J.